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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,194	12/16/2003	Anthony Kit Lun Leung	884.0213USU	5513
47545 7590 02/13/2007 STEVEN A. GARNER, ESQ. CONAIR CORPORATION ONE CUMMINGS POINT ROAD STAMFORD, CT 06902			EXAMINER NGUYEN, TUAN N	
			ART UNIT 3751	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/13/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/737,194

Applicant(s)

LEUNG, ANTHONY KIT LUN

Examiner

Tuan N. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claims 1-20 is withdrawn in view of the reference(s) to Yen (US 6,438,768). Rejections based on the cited reference(s) follow.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection as indicated below.

### ***Drawings***

3. The drawings are objected to because the new drawings filed 6/9/04 should be objected to as clearly containing new matter. The original drawings submitted by applicant on 12/16/03 were of such poor it resulted in a letter to applicant on 4/8/04 that replacement drawings were required. In response, applicant provides new drawings of such clarity and structure that were not clearly visible in the originally filed drawings raising doubt that applicant had possession of the structures shown in the new drawings. For example, the structure of the cover in figure 3 and the arrangement of the tubing in figure 5 in the original figures is not clearly seen yet the new drawings appear in such clarity that it is not certain that applicant had possession of the now shown structures at the time of filing.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

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number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to the structure of the outlets, which would produce the whirling flow pattern as claimed in claims 1 and 14 since the applicant provides no structure/discussion in the disclosure to provide the effect when draining.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 6-11, 13-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,438,768 (hereinafter Yen).

In regard to claim 1, Yen discloses a portable foot bath comprising a reservoir (see proximate lead line 10) having a floor (see figures); a jet (see proximate lead lines 33 and discussion at col. 1, lines 62+) “being disposed” on the floor; see also lead line 34 which is another jet “being disposed” on the floor; a first outlet (see lead line 150) in one side of the floor where a user’s right foot would be placed); and a second outlet (again, see lead line 150 in the side of the floor where a user’s left foot would be placed; see also figure 2 where passages 151 communicate with the respective outlets and supports the position that outlets are clearly located in the floor at distinct locations); wherein the jet(s) is/are clearly capable of circulating liquid in the reservoir as liquid ejecting from 32 would follow the curve of the wall of the bath and the liquid would clearly escape through the first and second outlets in a simultaneous manner. As to the whirling flow pattern, it is inherent in the outlets (drains) of Yen that a “whirling” flow pattern will exist. It is also noted that applicant does not set forth the actual structure of the whirling flow pattern in the claim. As water/fluid drains via the outlets, the flow pattern at each of the outlets and exiting through the outlets would clearly be turning or “whirling” to inherently provide this structure of the flow pattern. This is very well known in drains. It is noted that applicant does not claim a particularly “whirling” pattern in the claim, such as a vortex. Applicant provides no structure in the disclosure as to the

outlets being specifically designed to accomplish this pattern. It appears that the outlets are nothing more than conventional openings in the floor, similar to that in a bathtub, which inherently produces a swirling action when draining. Accordingly, the same would clearly occur in Yen. See MPEP 2111-2114. See also paragraphs 59 and 60 in applicant's disclosure in which applicant does not require a specific flow pattern.

In regard to claim 2, the jet is adjustable to control a direction of the liquid in that member 33 is pivotable up and down, which adjust the direction of the liquid eject from ports 34.

In regard to claim 3, the jet has a plurality of nozzles (32,34).

In regard to claim 6, the jet (21) has a substantially L-shape (see Fig. 4, upstanding part 33 and bottom part 30 is substantially L-shape).

In regard to claim 7, the first outlet is adjacent to the second outlet in a similar fashion as that of the instant invention.

In regard to claim 8, the jet is a plurality of jets (32 on the left and right of 30) and would inherently disposed in a circular manner on the floor (see Fig. 4, the jet where 32 is pointing to and the one on the opposite side would be considered to be disposed in a circular manner along the perimeter of the floor).

In regard to claim 9, the jet (about 34) sprays the liquid in a horizontal direction relative to the floor, the jet is inherently being adjustable to spray the liquid upward relative to the horizontal direction and adjustable spray the liquid downward relative to the horizontal direction since 33 is pivotable (see Figs. 3A and 3B).

In regard to claim 10, the Yen bath further comprises a heater (see abstract) for heating the liquid in the reservoir.

In regard to claim 11, the Yen bath further comprises a vibratory device (massaging rollers 16 produce rolling motion hence vibration) for imparting a plurality of vibrations to a user.

In regard to claim 13, the jet is connected to the first outlet and the second outlet, the first outlet and the second outlet providing the liquid to the pump (MP), the pump circulating the liquid to the jet, the jet spraying the liquid in the reservoir in the first whirling flow pattern and the second whirling flow pattern in a continuous manner.

In regard to claims 14-17, 19 and 20, the Yen discloses all of the claimed limitations as discuss above wherein the housing further has a plurality of legs (the two columns in member 1, see Fig. 1) and the reservoir is considered substantially circular shaped reservoir.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yen in view of Kapnick.

The portable bath device of the Yen reference, discussed above, teaches all of the claimed limitation except for a grate at each outlet, attention is directed to the Yen

reference as discussed in the previous office action, which discloses an analogous portable bath having a grate at each outlet. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Kapnick device, a grate at each outlet as, for example, taught by Kapnick in order to avoid unwanted object from clogging up the outlet or from damaging the pump if it accidentally gone through the outlets.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yen in view of US Patent 6,309,366 (hereinafter Maxwell).

Although the portable bath device of the Yen reference does not include a tube having a plurality of apertures as claimed, attention is directed to the Maxwell reference which discloses an analogous portable bath device having a tube (95) having a plurality of apertures capable of performing the functions as claimed to improve the therapeutic effect. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Yen device, a tube having a plurality of apertures as, for example, taught by Maxwell in order to improve the therapeutic effect.

### ***Conclusion***

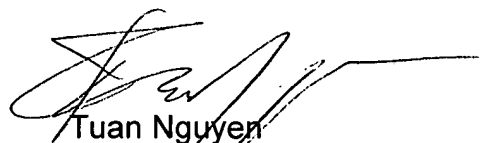
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tuan Nguyen  
Primary Examiner  
Art Unit 3751

TN